

ITEM: 16

SUBJECT: ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R5-2005-05-01, Hilmar Cheese Company, Inc. and its wholly owned subsidiary, Hilmar Whey Protein, Inc, Merced County

BOARD ACTION: *Consideration of either a settlement agreement or the re-scheduling of a hearing on the merits of the proposed ACL Complaint.*

BACKGROUND: Hilmar Cheese Company, Inc. and its wholly owned subsidiary, Hilmar Whey Protein, Inc., (hereafter “Hilmar”) are privately held California corporations that own and operate a Cheese Processing Plant (hereafter “Plant”) about one-half mile north of the unincorporated community of Hilmar. Hilmar discharges cheese processing wastewater from the cheese pit and the lactose pit to the “Primary Lands,” adjacent to the Plant. The discharge is regulated by Waste Discharge Requirements (WDRs) Order No. 97-206 and Cleanup and Abatement Order No. 2004-0722 (hereafter “CAO”). Since March 2001, Hilmar has also provided treated wastewater to other persons for irrigation of “Secondary Lands” near the Plant.

On 26 January 2005, the Executive Officer for the California Regional Water Quality Control Board, Central Valley Region issued Administrative Civil Liability (ACL) Complaint No. R5-2005-0501 to Hilmar Cheese Company, Inc. and its wholly owned subsidiary, Hilmar Whey Protein, Inc, Hilmar Cheese Company Properties Partnership and Kathy and Delton Nyman, dba Delton Nyman’s Farm. The ACL Complaint was later withdrawn as to Hilmar Cheese Company Properties Partnership and Kathy and Delton Nyman, dba Delton Nyman’s Farm. The ACL Complaint alleges that (1) Hilmar’s self-monitoring reports document 1,039 days of violation of the discharge effluent limit of 900 micromhos per centimeter ($\mu\text{mhos/cm}$) for EC prescribed by WDRs Order No. 97-206 for discharges to Primary Lands; (2) Hilmar’s self monitoring reports document that on those 1,039 days, Hilmar discharged 821,000,000 gallons of wastewater to the Primary Lands; and (3) on those 1,039 days, Hilmar discharged waste or caused or permitted waste to be deposited where it was discharged into waters of the state. The ACL Complaint proposes that Hilmar pay a liability of \$4,000,000 (four million dollars).

On 12 September, 2005, the Dischargers and the Prosecution Staff jointly requested the Chair to suspend the procedural schedule and hearing on the ACL Complaint, because they had reached a “conceptual settlement”. The parties hoped that they would be able to present the Regional Board with a settlement agreement for its consideration at the 21 October 2005 Regional Board meeting.

The Regional Board will consider a settlement, if one is presented, and it may consider whether to re-establish the procedural schedule and re-schedule the hearing on the ACL Complaint. If a settlement is presented to the Regional Board, the Board may:

1. Accept & approve the settlement;
2. Provisionally accept the settlement, arrange for a period of public comment, and schedule a hearing for approval at a later board meeting;
3. Disapprove the settlement with some direction or suggestions to prosecutorial staff; or
4. Disapprove the settlement and re-establish the procedural schedule and reschedule the hearing.

If no settlement is presented, the Regional Board will consider whether to re-establish the procedural schedule and reschedule the hearing.

ISSUES:

- Should the Regional Board accept a proposed settlement, should it provide a period of public comment, should it allow the parties more time to negotiate, or should it re-establish the procedural schedule and reschedule the hearing?

After the hearing, the Board may adjourn to closed session to deliberate on the decision to be reached based upon the evidence introduced at the hearing. Authority: Government Code Section 11126(c)(3).

Mgmt. Review _____
Legal Review _____

20/21 October 21 2005
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